

25-5-4 Certain agreements void unless written and signed.

- (1) The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement:
- (a) every agreement that by its terms is not to be performed within one year from the making of the agreement;
 - (b) every promise to answer for the debt, default, or miscarriage of another;
 - (c) every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry;
 - (d) every special promise made by an executor or administrator to answer in damages for the liabilities, or to pay the debts, of the testator or intestate out of his own estate;
 - (e) every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation; and
 - (f) every credit agreement.
- (2)
- (a) As used in Subsection (1)(f) and this Subsection (2):
 - (i)
 - (A) "Credit agreement" means an agreement by a financial institution to:
 - (I) lend, delay, or otherwise modify an obligation to repay money, goods, or things in action;
 - (II) otherwise extend credit; or
 - (III) make any other financial accommodation.
 - (B) "Credit agreement" does not include the usual and customary agreements related to deposit accounts or overdrafts or other terms associated with deposit accounts or overdrafts.
 - (ii) "Creditor" means a financial institution which extends credit or extends a financial accommodation under a credit agreement with a debtor.
 - (iii) "Debtor" means a person who seeks or obtains credit, or seeks or receives a financial accommodation, under a credit agreement with a financial institution.
 - (iv) "Financial institution" means:
 - (A) a state or federally chartered:
 - (I) bank;
 - (II) savings and loan association;
 - (III) savings bank;
 - (IV) industrial bank; or
 - (V) credit union; or
 - (B) any other institution under the jurisdiction of the commissioner of Financial Institutions as provided in Title 7, Financial Institutions Act.
 - (b)
 - (i) Except as provided in Subsection (2)(e), a debtor or a creditor may not maintain an action on a credit agreement unless the agreement:
 - (A) is in writing;
 - (B) expresses consideration;
 - (C) sets forth the relevant terms and conditions; and
 - (D) is signed by the party against whom enforcement of the agreement would be sought.
 - (ii) For purposes of this act, a signed application constitutes a signed agreement, if the creditor does not customarily obtain an additional signed agreement from the debtor when granting the application.
 - (c) The following actions do not give rise to a claim that a credit agreement is created, unless the agreement satisfies the requirements of Subsection (2)(b):

- (i) the rendering of financial advice by a creditor to a debtor;
 - (ii) the consultation by a creditor with a debtor; or
 - (iii) the creation for any purpose between a creditor and a debtor of fiduciary or other business relationships.
- (d) Each credit agreement shall contain a clearly stated typewritten or printed provision giving notice to the debtor that the written agreement is a final expression of the agreement between the creditor and debtor and the written agreement may not be contradicted by evidence of any alleged oral agreement. The provision does not have to be on the promissory note or other evidence of indebtedness that is tied to the credit agreement.
- (e) A credit agreement is binding and enforceable without any signature by the party to be charged if:
- (i) the debtor is provided with a written copy of the terms of the agreement;
 - (ii) the agreement provides that any use of the credit offered shall constitute acceptance of those terms; and
 - (iii) after the debtor receives the agreement, the debtor, or a person authorized by the debtor, requests funds pursuant to the credit agreement or otherwise uses the credit offered.

Amended by Chapter 92, 2004 General Session